

U.S. DEPARTMENT OF TRANSPORTATION FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION FIELD OPERATIONS TRAINING MANUAL

Volume - II: Compliance

Chapter 7: Conclusion of the Compliance Review

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Illustration 7-1: Alpha Locator Guidelines

1. GUIDANCE ON COMPLETION OF LAPTOP FORM PART A

- a. Legal Name of Motor Carrier/Shipper - It is imperative that the correct and complete legal name of the motor carrier be obtained. If not done, enforcement action against the motor carrier may be hindered. In the case of a corporation, obtain the exact company name by asking a corporate officer, examining the Articles of Incorporation, and/or requesting a document with the corporate seal. The full names of corporate officers, partners, or the sole proprietor should be obtained.
- b. Doing Business As (Operating Name) - In the case of individuals or corporations who are doing business under a name other than the legal name, enter the doing-business-as (DBA) name only. For example, if John Jones is doing business as JJ Trucking, enter "JJ Trucking."
- c. Gross Revenue is all revenue generated by the legal entity being reviewed. If the motor carrier refuses to release this figure, record this information in Part C remarks.
- d. Review Mileage (previous 12 months)
 - (1) For motor carriers domiciled in the United States, enter total commercial motor vehicle mileage for all power units under the carrier's control recorded on Part A. Include mileage in interstate and intrastate commerce, and mileage in Canada and Mexico.

- (2) For motor carriers domiciled in Canada, and Mexico, enter mileage occurring in the United States only.
- (3) If the motor carrier has been operating for less than 12 months, enter an extrapolated annual mileage figure based on the total mileage since beginning operations. For example, a motor carrier has 800,000 total vehicle miles since beginning operations 8 months ago. An annual mileage extrapolation is calculated by dividing 12 months by the operating time period (8 months in this case) and multiplying this quotient (1.5 in this case) by the mileage during the operating time period (800,000 miles in this case). The extrapolated annual mileage figure for this example is 1,200,000 miles.
- e. Equipment - The data entered must reflect the vehicles that are, or could be, operated at the time of the CR with the exception of trip leased vehicles. Enter an average of trip leased vehicles per month. If the same vehicle is used several times in a month, count each trip separately. "Term leased" equipment is often used interchangeably with the term "permanent leased." A term lease lasts for 30 days or longer. A trip lease lasts for less than 30 days.
- f. Definitions of Passenger-Carrying Vehicles:
- Intercity Motor Bus (Motorcoach)** - A vehicle designed for long distance transportation of passengers, usually equipped with a lavatory, storage racks above the seats, and a baggage hold beneath the cabin.
- School Bus** - A vehicle designed and/or equipped mainly to carry primary and secondary students to and from school, usually built on a medium or large truck chassis.
- Mini-bus/Van** - A multi-purpose passenger vehicle with a capacity of 10-24 people, typically built on a small truck chassis.
- Limousine** - A passenger vehicle usually built on a lengthened automobile chassis.
- g. Drivers - The total number of drivers who are subject to the FMCSRs includes single-employer drivers, multiple-employer drivers, and the average number of trip leased drivers per month. Enter total number of drivers currently employed at the time of review. A driver who was trip leased multiple times is counted for each trip lease. For example, a driver who was trip leased five times during a month is counted five times rather than once. A driver is counted as a CDL driver if he/she possesses a CDL and operates a commercial motor vehicle as defined in 49 CFR Part 383.

2. GUIDANCE ON COMPLETION OF LAPTOP FORM PART B

- a. Part B is always prepared even if no violations are discovered. Do not cite the motor carrier for potential violations. For example, a driver's medical examiner's certificate has expired and the motor carrier has not used the driver since the expiration, but the motor carrier admits that they were unaware of the expiration and they intended to use the driver in the near future. No violation was committed in this instance.
- b. After a regulation is removed by a rulemaking action, investigators must not cite violations of the regulation that occurred before the removal.
- c. The practice of "pyramiding" violations must be avoided. For example, a motor carrier must require its driver to make a RODS when the driver operates a commercial motor vehicle in interstate commerce. The driver must submit or forward the original RODS to the employing motor carrier within 13 days following completion of the RODS. If the motor carrier failed to require the driver to make a RODS, one could argue that there were two violations because there was no RODS prepared and a RODS was not submitted or forwarded. Only one of these violations can be cited.
- d. The rules in Part 395 control hours of service in periods of either 7 consecutive days (if the carrier does not operate every day of the week) or 8 consecutive days (if the carrier operates every day of the week). The hours of service requirements in Part 395 applies to all interstate drivers 7 days prior to an interstate trip and for the 7- or 8-day period following an interstate trip.
 - (1) Any driver who begins a trip in interstate commerce must continue to meet the requirements of 49 CFR 395.3(a) and (b) through the end of the next 7 to 8 consecutive days, depending on which rule the motor carrier operates under.

The driver must continue to comply with the requirements of 49 CFR Part 395, even if he/she operates exclusively in intrastate commerce for the remainder of the 60/70 hour period (i.e. 7-8 day schedule) at the end of the interstate trip. The driver must also continue to comply with the 10- and 15-hour rules as well as the 60- or 70-hour rules for the remainder of that day, and the following 7 days (if the 60-hour rule was applicable) or 8 days (if the 70-hour rule was applicable). A driver who begins a trip in interstate commerce in a CMV must have in his/her possession a copy of records of duty status for the previous 7 consecutive days, as required by 49 CFR 395.8(k)(2) *unless they meet 49 CFR 395.1(e)*, even if the driver operated only in intrastate

commerce during that 7-day period. During the 7-day period prior to the interstate trip the driver **may** follow the state regulations applicable to intrastate commerce with regard to the states' CMV driving and on-duty requirements.

- (2) FMCSA investigators should cite drivers for violations of the 10- or 15-hour rules or the 60- or 70-hour rules that are committed while on the interstate trip or during the 7 or 8 days after completing the interstate trip (depending on which rule the motor carrier operates under). The driver remains subject to Part 395 for 7 or 8 days after a trip in interstate commerce even if he/she drives only in intrastate commerce for that period. Violations of the policies stated here which are discovered during compliance reviews should be treated like any other violations of the FMCSRs in determining the motor carrier's safety rating and enforcement action may be taken.
 - (3) The MCSAP Tolerance Guidelines in Appendix C to 49 C.F.R. Part 350 are unchanged. This policy statement simply clarifies the difference between Paragraphs 2 and 3 of the Guidelines, i.e., between the type of trips subject to Federal jurisdiction, as opposed to those subject only to State jurisdiction.
- e. In order to cite a motor carrier for failing to implement an alcohol and/or controlled substances testing program, the motor carrier must have not conducted any testing at all. In this case, the motor carrier must be cited for one violation of 49 CFR § 382.115(a). If, however, the motor carrier has previously been cited for Part 382 violations and still does not have a testing program, the carrier must be cited for each discovered failure to conduct a required test.
 - f. For violations of acute or critical regulations **or** regulatory violations that will be considered for civil penalty purposes as part of an enforcement action, the investigator must be able to provide information about each of these violations which is counted in a "number found" field of the CR report. The list of acute and critical regulations and counting guidance for violations of such regulations is contained in Chapter 11 of this Volume. The investigator must be able to identify the date, driver's name, and specific document(s) (e.g. fuel receipt, trip envelope, scale ticket, etc.) used to detect each of these violations.
 - g. The number of RODS checked for falsification is the number of RODS checked against supporting documentation. A RODS that shows 24 consecutive hours off duty and is verified to be accurate, is counted as a RODS checked for falsification. The proper cite for twenty falsified RODS found out of sixty-eight checked RODS would be twenty found and sixty-eight

checked. Time records which are checked for inaccuracy or falsification are not counted as RODS checked for falsification. **An inaccurate time record is considered to be a failure to prepare a RODS, not a false RODS.**

- h. When citing failure to prepare RODS, the number of RODS checked for preparation is the number of days for which the driver remained an employee of the motor carrier and a RODS or time record was requested or reviewed. Every single condition of the 100 air-mile radius exemption in 49 CFR § 395.1(e) must be fulfilled in order for a driver to be exempt from preparing a RODS. A failure to fulfill any condition of the exemption results in the application of the requirement to prepare a RODS. An incomplete time record is a failure to prepare a RODS. Motor carriers must maintain records stating that their 100 air-mile radius drivers were off-duty during days these drivers did not work. Failure to do so is a failure to prepare a RODS.
- i. When citing 10 and 15 hour violations, the number checked is the number of RODS reviewed by the investigator. This does include those RODS that show the driver was off-duty for the entire 24-hour period. Multiple days designated as off-duty on a single RODS are counted as multiple RODS checked for excessive driving.
- j. When citing the failure to record an accident on the accident register, the number checked is the total number of accidents that were required to be recorded on the register for the 12 month period prior to the date of the CR.
- k. If a violation does not apply to drivers or vehicles (e.g. missing form MCS-90), enter zero discovered and zero checked for the number of drivers or vehicles found to be in violation.
- l. When citing a for-hire motor carrier for a violation of the HMRs, write the citation as a violation of the appropriate section within 49 CFR Part 177 if possible. If there is no appropriate section within Part 177 for the violation, write the citation as a violation of another part of the HMRs (e.g. 49 CFR Parts 171, 172, etc.) When citing a private motor carrier for a violation of the HMRs, cite the most appropriate section of the HMRs.

3. CLOSEOUT SESSION

- a. Conduct the closeout session with an owner, partner, or corporate officer. If none are available, discuss the CR with the most appropriate person.
- b. During the closeout session, the investigator should inform the motor carrier official of the company's proposed safety rating, and explain that the final

safety rating will be issued from Washington, DC. If requested, the investigator should explain how the rating will be determined.

- c. If enforcement action is planned, the motor carrier/shipper official shall be informed that an enforcement action may result from the CR. Specific violations that are likely to result in penalties, and recommendations to correct noncompliance should be discussed.
- d. When the closeout session has concluded, the investigator must request the highest ranking motor carrier/shipper official in the session to sign and write his/her title on Part A and each page of Part B of the CR report. If this official is not the sole proprietor, a partner, or a corporate officer, leave a copy of the signed report and advise him/her that another copy will be sent by certified mail to the sole proprietor, a partner, or a corporate officer. **Only copies of Parts A and B of the CR report are given to the motor carrier. The motor carrier does not receive a copy of Part C.**
- e. If the motor carrier/shipper official refuses to sign the CR report, advise him/her that the signature only constitutes a receipt for the report. If he/she still refuses, tell him/her that a copy of the CR report will be mailed to the sole proprietor, a partner, or a corporate officer by certified mail. Upon a refusal to sign, **do not leave a copy** of the CR report. When mailing the copy, send it by certified mail with return receipt requested.
- f. If the motor carrier/shipper committed any violation of an acute regulation, or a frequency of violations of a critical regulation of 10% or more, some action must be requested of the carrier/shipper during the closeout interview. Generally, a request to submit a letter to the investigator within 14 calendar days, outlining corrective actions planned and taken is sufficient. Other requests such as asking the motor carrier/shipper to submit specific records and documents may be appropriate.
- g. If the motor carrier has had any accidents in the previous 12 months, make the motor carrier aware of the accident countermeasures and Hazardous Materials Incident Prevention countermeasures information that is available on the agency's Internet website. The purpose of these countermeasures is to assist motor carriers in analyzing their accidents and incidents, and developing strategies to eliminate future occurrences.

4. GUIDANCE ON COMPLETION OF LAPTOP FORM PART C

- a. In order for the FMCSA to make informed CR policy decisions, the agency must have accurate data about the initiation of CRs. **It is very important that investigators designate the correct reason(s) for initiation of the**

CR in Part C of the CR report. If there are multiple reasons for initiation of a review, this can be recorded in Part C remarks.

- (1) Designate “priority list” if the CR was initiated because of the motor carrier’s SafeStat score or priority score on the HM/Passenger list.
 - (2) Designate “complaint” if the CR was initiated because of a complaint identified on the division office complaint register.
 - (3) Designate “subject request” if the motor carrier or shipper requested the review.
 - (4) Designate “enforcement follow-up” if the CR was conducted as a follow-up to an enforcement action.
 - (5) Designate “other” if the CR was conducted in response to an accident, a special project, or for other reasons.
- b. If the CR was conducted because of the motor carrier’s SafeStat score, enter “SafeStat (A -G)” as appropriate in the special studies section. Enter a SafeStat score of “N/A” if a priority list other than SafeStat was used (e.g. HM/Passenger list).
- c. The reason(s) for NOT taking enforcement action in response to discovered violations of an acute regulation or mandatory enforcement violations must be explained in Part C of the CR report.
- d. The following issues should be discussed in Part C:
- (1) Statements made by motor carrier officials relative to correcting the violations or safety system breakdowns discovered during the CR;
 - (2) The motor carrier's/shipper’s actions related to compliance;
 - (3) The motor carrier's/shipper’s level of understanding of applicable regulations;
 - (4) The degree of assistance and cooperation given by motor carrier/shipper officials to the investigator during the CR;
 - (5) The educational materials provided to the motor carrier/shipper;
 - (6) Anything atypical about the motor carrier’s/shipper’s operation;
 - (7) The extent and nature of any divisions or business locations of the motor carrier/shipper;

- (8) The financial condition of the motor carrier/shipper;
- (9) The names of any relevant company officials that were interviewed, but were not listed on Part A of the CR report;
- (10) The reason for not taking enforcement action in response to any discovered violation of an acute regulation or discovered pattern of violations of a critical violation;
- (11) The breakdown of commercial motor vehicles which have a GVWR between 10,001 pounds and 26,000 pounds, and greater than 26,000 pounds;
- (12) The names and locations of any relevant documents; and
- (13) Any other information that explains and/or complements the cited violations in Part B, and would increase the accuracy of the evaluation process, and would aid the investigator who conducts a follow-up CR.

5. *PROMPT UPLOADING*

It is important that all reviews be uploaded in an expedient manner. **If the proposed rating is unsatisfactory, the review must be electronically uploaded from CAPRI to SAFETYNET within 7 days after the closeout session. All other reviews must be uploaded to SAFETYNET within 10 working days after closeout session.**